Thank you for presenting me with the opportunity to share my views on the Proposed Final Judgment (PFJ) on the Microsoft case.

I firmly believe that the PFJ will fail to curb Microsofts illegal, anticompetitive behaviors (or as John Ashcroft simply called it, Microsoft's unlawful conduct) due to its failure to either address at all, or in sufficient detail, three main behaviors. 1) Most Windows APIs are shipped by Microsoft as add-on SDKs with associated redistributable components under a very restrictive End User License Agreements (EULA) barring use with Open Source or Free Software applications. 2) Microsoft discriminates against independent software vendors who want to develop Windows-compatible, competing operating systems. 3) The PFJ narrowly defines Windows Operating System Product in definition U to mean only Windows 2000 Professional, Windows XP Home, Windows XP Professional, and their successors ignoring Windows Pocket PC, X-Box, Tablet PC and other OSs which Microsoft is developing.

As I mentioned, most Windows APIs are currently shipped by Microsoft as add-on SDKs with other associated redistributable components. Applications which wish to use the Windows APIs are forced to also use the add-on SDK components even though those same add-ons. The catch, of course, is that the SDK components almost always have very restrictive EULAs prohibiting their use with Open Source or Free Software applications. This directly harms companies wishing to develop software as they are forced to either hope that the people using their product already have up-to-date APIs (which is always possible, but is a poor practice for a company to rely on as their product will quickly become thought of as unstable or unreliable since there is bound to be a group of users who suffer problems due to API problems) or they must shun Open Source and Free Software licenses for their product.

Two applications which are harmed by this restrictive EULA include the competing middleware product Netscape

6 (competing against Internet Explorer 6) and the competing office suite StarOffice (a competitor with Microsoft Office XP). The restrictive EULAs thus can cause support problems for, and discourage the use of, competing middleware and office suites. Additionally, since Open Source or Free Software applications tend to also run on non-Microsoft operating systems, any resulting loss of market share by Open Source or Free Software applications indirectly harms competing operating systems.

The PFJ will fail to curb Microsofts discrimination against independent software vendors who want to develop Windows-compatible, competing operating systems. Today, the Microsoft Platform SDK coupled with Microsoft Visual C++, is the primary toolkit used by ISVs to create Windows-compatible applications. However, the EULA for the Microsoft Platform SDK reads in part:

Distribution Terms. You may reproduce and distribute ... the Redistributable Components... provided that (a) you distribute the Redistributable Components only in conjunction with and as a part of your Application solely for use with a Microsoft Operating System Product...

This makes it illegal to run programs built with Visual C++ on Windows-compatible competing operating systems. The PFJ failure to address these exclusionary behaviors will contribute to the Applications Barrier to Entry faced by competing operating systems.

Perhaps the biggest flaw of the PFJ is that it uses an overly narrow definition of Windows Operating System Product in definition dd. Restricting the definition of Windows Operating System Product to only Windows 2000 Professional, Windows XP Home, Windows XP Professional, and their successors ignores many major avenues of growth that Microsoft itself sees in the future of computing. Microsoft's monopoly is on Intel-compatible operating systems not just the three current OSs listed in the PFJ and their successors.

Nearly all applications written to the Win32 APIs can run unchanged on Windows 2000, Windows XP Tablet PC Edition, and Windows CE, and with a simple recompilation, can also be run on Pocket PC. Microsoft

even proudly proclaims at
www.microsoft.com/windowsxp/tabletpc/tabletpcqanda.asp:
The Tablet PC is the next-generation mobile business
PC, and it will be available from leading computer
makers in the second half of 2002. The Tablet PC runs
the Microsoft Windows XP Tablet PC Edition and
features the capabilities of current business laptops,
including attached or detachable keyboards and the
ability to run Windows-based applications.
Bill Gates, in his address at the recent COMDEX
convention (available at:
http://www.microsoft.com/billgates/speeches/2001/11-11comdex.asp)
with Jeff Raikes assisting him agreed with the
statement that the Tablet PC operating system is
already able to run all existing Windows programs
along with a suite of its own applications. And yet
it is highly debatable that the Tablet PC operating
system is a successor to any of the three OSs listed
in the PFJ. Even clearer is that Windows Pocket PC is
not covered in the PFJ as it existed before any of the
three OSs listed again, Windows Pocket PC can run
versions of many Windows programs.
Microsoft is clearly pushing Windows XP Tablet PC
Edition and Pocket PC in places (e.g. portable
computers used by businessmen) currently served by
Windows XP Home Edition, and thus appears to be trying
to evade the Final Judgment's provisions. This is but
one example of how Microsoft can evade the provisions
of the Final Judgment by shifting its efforts away
from the Operating Systems listed in Definition U and
towards Windows XP Tablet Edition, Windows CE, Pocket
PC, X-Box (which in its next generation, currently
named Homestation will attempt to dominate the
Personal Video Recorder market currently led by TiVO
and SonicBlue while becoming the central piece of
entertainment in homes or as ABC News said,
Microsoft's big black box is but a cog in a more
ambitious machine, one designed to tie the software
giant to every area of home entertainment. The whole
story is available at:
abcnews.go.com/sections/scitech/TechTV/techtv_Xbox020123.html)
or some other Microsoft Operating System that can run
Windows applications.

So what we are left with is a potential shift in
Microsofts business away from Windows XP and towards
new OSs like Windows Tablet Edition or X-Box or
Pocket PC none of which are clearly successors to
Windows XP. Instead, they are Windows-compatible

operating systems the exact same type of product
that Microsoft bars other companies from making as I
addressed in my second point. Therefore, the PFJ will
allow Microsoft to extend its monopoly as it can (and
certainly will) develop distinct new Operating Systems
which are Windows compatible while not addressing
Microsofts refusal to grant that right to other
companies.

Finally, I need to say that the opinions I expressed
here are solely my own and are in no way influenced by
the fact that one of the paralegals at the Department
of Justice is cute!

Sincerely,

Mark Roberts
Washington, DC